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ABSTRACT

This document, which is not legal advice, has been designed to help medical schools work with legal counsel to put into practice the rulings from two Michigan court cases that provide tools for enhancing medical school diversity and outline the contours of a race-conscious/ethnicity-conscious admissions policy likely to pass legal muster. The document focuses on using the diversity rationale in building race-conscious/ethnicity-conscious admissions policies. It offers: (1) brief summaries with an analysis of both Grutter v Bollinger, et al. (the law school case) and Gratz et al. v. Bollinger et al. (the undergraduate case); (2) policy considerations associated with the U.S. Supreme Court rulings in these cases; (3) a list of considerations to help medical schools think about how to implement narrowly tailored, race-conscious/ethnicity-conscious admissions policies or assess existing policies; and (4) appendices that include historical highlights of affirmative action. in education and selected references for readers to obtain more information about how the Court ruled and the implications of its rulings. With the Supreme Court rulings an important mechanism for promoting diversity has been preserved, although opponents of affirmative action will continue to challenge institutions that use race-conscious/ethnicity-conscious policies. (Contains 40 references.) (SLD)

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Assessing Medical School Admissions Policies:

Implications of the U.S. Supreme Court's Affirmative-Action Decisions

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Implications of the U.S. Supreme Court's Affirmative-Action Decisions

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The Association of American Medical Colleges (AAMC) produced this publication to help medical schools continue their efforts to foster diversity within their student bodies and the health professions. The Division of Community and Minority Programs (DCMP) prepared the materials. As with most projects, creating this publication required the support and work of many individuals within DCMP and the AAMC with input from AAMC constituents. The document also benefited from a review by Joseph Keyes, AAMC senior vice president and general counsel, and Martin Michaelson, a partner with the firm of Hogan & Hartson, L.L.P.

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Table of Contents

About This Document 1

"It is so ordered."–Understanding the University of Michigan Decisions 3

Summary of Each Case 3
Grutter v. Bollinger, et al. 3
Gratz, et al. v. Bollinger, et al. 4

Analysis of the Cases 4
Comparing the Law School's and Undergraduate School's Admissions Policies 4
The "Diversity Rationale" and "Compelling Interest" 5
"Narrow Tailoring Requirement" 6
Setting Goals for Diversity, "Critical Mass," and Attention to Numbers 7

Implementing the Court's Decisions: Considerations Pertinent to Race-Conscious/Ethnicity-Conscious Admissions Policies 9

Articulating the Diversity Rationale 9
Question One: Is Diversity a Compelling Interest for Your School? 9
Question Two: How Does Your School Demonstrate Diversity as a Compelling Interest? . 10

Preparing Race-Conscious/Ethnicity-Conscious Admissions Policies 11
Question Three: What are the Contours of Your School's Narrowly Tailored Policies? . . . 11

Other Considerations: The Dissenting Opinions 15

A Review List of Selected Considerations for Race-Conscious/Ethnicity-Conscious Admissions Policies 17

Appendix
Appendix A: Affirmative Action in Education: Historical Highlights . . . . . Appendix-i
Appendix B: Selected Resources (Publications and Web Sites) . . . . . Appendix-iii

About This Document

"In order to cultivate a set of leaders with legitimacy in the eyes of the citizenry, it is necessary that the path to leadership be visibly open to talented and qualified individuals of every race and ethnicity. All members of our heterogeneous society must have confidence in the openness and integrity of the educational institutions that provide this training."

– Justice Sandra Day O'Connor[1]

On June 23, 2003, the U.S. Supreme Court lifted to a significant extent the cloud of uncertainty that has engulfed affirmative action in higher education for the past decades. In issuing its rulings in the cases challenging the University of Michigan's affirmative-action admissions policies at its law school and undergraduate school, the Court affirmed that the benefits that flow from a diverse student body (sometimes called the "diversity rationale") may constitute a compelling interest that can justify the use of narrowly tailored, race-conscious/ethnicity-conscious admissions policies. In doing so, the Court has presented a set of tools for enhancing diversity. *The rulings apply both to public higher-education institutions and those private institutions (including medical schools) that receive federal funds.*[2] The rulings also outline the contours of a race-conscious/ethnicity-conscious admissions policy likely to pass legal muster.

The opinions in the Michigan cases (*Grutter v. Bollinger, et al.*—the law-school case and *Gratz, et al. v. Bollinger, et al.*—the undergraduate-school case) are ***must reading*** for any medical school seeking to adopt or continue the use of race-conscious/ethnicity-conscious admissions policies. In addition, of course, schools should consult with legal counsel in preparing, administering, or reviewing race-conscious admissions policies.

This document, which is not legal advice, has been designed to help medical schools work with legal counsel to put the rulings into practice. It focuses specifically on using the diversity rationale in building race-conscious/ethnicity-conscious admissions policies and offers:

- brief summaries with an analysis of the *Grutter* and *Gratz* cases;
- policy considerations associated with the Court's rulings;
- a list of considerations to help medical schools think about how to implement narrowly tailored, race-conscious/ethnicity-conscious admissions policies or assess existing policies; and

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[1] *Grutter v. Bollinger, et al.*, 123 S.Ct. 2325, 2341 (2003).

[2] The case involved both a constitutional challenge to the admissions policy and statutory claims under Title VI of the Civil Rights Act of 1964 and 42 U.S.C. 1981. The statutory claims provide the basis for applying this decision to private institutions.

- appendices that include:
  - historical highlights of affirmative action in education; and
  - selected references for readers to obtain more information about how the Court ruled and the implications of its rulings.

While this document focuses exclusively on the diversity rationale because that rationale has withstood legal challenge, it may not be the only rationale justifying race-conscious/ethnicity-conscious admissions policies. Depending on the circumstances, some observers believe that additional rationales may exist for implementing such policies at your institution. You should consult your institution's general counsel to explore this possibility.[3]

With the Supreme Court rulings, an important mechanism for promoting diversity has been preserved. Nevertheless, opponents of affirmative action will continue to challenge institutions that employ race-conscious/ethnicity-conscious policies. Hence, as reflected in a recent column by lawyer Martin Michaelson in *The Chronicle of Higher Education*,[4] schools must be both painstaking and deliberate in assessing existing race-conscious/ethnicity-conscious admissions policies or in creating new ones.

In addition to court challenges, some opponents of affirmative action are attempting to achieve through ballot initiatives what they were unable to accomplish in the courts. Considerable attention has been given to the prospect of additional state ballot initiatives, modeled along the lines of Proposition 209 in California, which are designed to prevent use of race in evaluating an applicant for admissions. The AAMC will continue to monitor such challenges as it works to promote diversity in academic medicine.

We hope that this document will prove helpful. Please let us know if you have any questions about the content or comments about how the AAMC can best serve its constituents in implementing the Court's rulings. You may email the AAMC with your questions or comments at *morediversity@aamc.org*.

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[3] Perez, T. 2001. "Current Legal Status of Affirmative Action Programs in Higher Education," *The Right Thing to Do, The Smart Thing to Do, Enhancing Diversity in Health Professions*. National Academies of Sciences Press 91-116.
[4] Michaelson, M., July 2003. "The court's pronouncements are more dramatic and subtle than the headlines." *The Chronicle of Higher Education*. pp. B11 – B14.

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"It is so ordered."—Understanding the University of Michigan Decisions

This section contains brief summaries of the background and the U.S. Supreme Court's opinions in the *Grutter* (law school) and *Gratz* (undergraduate school) cases. The summaries are followed by an analysis that:

- compares the law school's and undergraduate school's admissions policies in the context of the Court's rulings;
- addresses "diversity" as a "compelling interest";
- describes the "narrowly tailoring" requirement; and
- discusses setting diversity goals and the concept of "critical mass."

Summary of Each Case[5]

Grutter v. Bollinger, et al.

Background: In *Grutter v. Bollinger, et al.*, Barbara Grutter, an unsuccessful applicant for the University of Michigan law school's 1997 fall entering class, challenged the school's use of race in its admissions process. Grutter attacked the university's affirmative-action policy on the grounds that it unlawfully discriminated against her because the university took race and ethnicity into account as a "plus" factor, among many factors, in its admissions process.

The position of the University of Michigan was that the U.S. Constitution and civil rights statutes, as interpreted by the U.S. Supreme Court in the 1978 *Bakke*[6] decision, permitted it to take race and ethnicity into account in its admissions program to achieve the educational benefits of a diverse student body. The university contended that these benefits constituted a "compelling governmental interest" that justified consideration of race and ethnicity in the university's admissions system.

The Opinion in *Grutter*: On June 23, 2003, a 5-4 Supreme Court ruling deferred to the University of Michigan's judgment that diversity is a compelling interest and held that its law school's admissions policy is permitted by the U.S. Constitution and federal civil rights statutes. The ruling upheld the law school's approach of using race (among other factors) as a "plus" factor in admissions—as long as there is individual evaluation of each applicant's ability to contribute to a diverse student body. The Court's majority opinion, written by Justice Sandra Day O'Connor, stated that the law school's "narrowly tailored use of race in admissions decisions"[7] furthered "a compelling interest in obtaining the educational benefits that flow from a diverse student body."[8]

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[5] The history of the two cases is adapted from information provided by the University of Michigan. Copyright © by the Regents of the University of Michigan.
[6] *University of California Regents v. Bakke* 429 U.S. 953 (1978).
[7] *Grutter*, 123 S.Ct. at 2347.
[8] *Id.*

Gratz, et al. v. Bollinger, et al.

Background: In *Gratz, et al. v. Bollinger, et al.*, Jennifer Gratz, an unsuccessful applicant for the 1995 fall term at the University of Michigan's College of Literature, Science & the Arts, and Patrick Hamacher, an unsuccessful applicant for the 1997 fall term, challenged the university's use of race in its admission process at the undergraduate college. Gratz and Hamacher attacked the university's affirmative-action policy on the ground that the University of Michigan's use of racial preferences in undergraduate admissions unlawfully discriminated against them.

As in the *Grutter* case, the position of the University of Michigan was that the U.S. Constitution and civil rights statutes, as interpreted by the U.S. Supreme Court in the 1978 *Bakke* decision, permitted it to take race and ethnicity into account in its admissions program to achieve the educational benefits of a diverse student body.

The Opinion in Gratz: On June 23, 2003, a 6-3 Supreme Court ruling stipulated that diversity had been found to be a compelling interest in *Grutter*, but found that the manner that the University of Michigan undergraduate school used to achieve diversity is impermissible. The ruling rejected the undergraduate affirmative-action program because it entitled applicants from underrepresented minority groups to an automatic 20-point bonus on a 150-point scale used to rank all applicants. This bonus represented one-fifth of the 100 points that virtually guaranteed acceptance. The Court found that the point system was too mechanistic and "does not provide . . . individualized consideration"[9] of applicants.

Analysis of the Cases

Comparing the Law School's and Undergraduate School's Admissions Policies

Both the law school's and undergraduate school's admissions policies used race/ethnicity as one of many factors in admissions, and did so to achieve the benefits that flow from having a diverse student body. Both schools defined diversity broadly and not solely in terms of race and ethnicity. Neither school employed quotas or set-asides for minority applicants. (In fact, the law school admissions data indicated that the number of underrepresented minority students admitted each year between 1993 and 2000 ranged from 13 percent to 20 percent.) All candidates at each school were considered in the same applicant pool.

What differentiated the law school and the undergraduate admissions policies was the manner in which various factors were taken into account. At the undergraduate school, the university used a point system in which a number of factors were taken into account, including high school grades, standardized test scores, high school quality, curriculum strength, geography, socioeconomic disadvantage, alumni status, and race/ethnicity. Under this system, an applicant could receive up to 150 points. A person who was a member of an underrepresented minority group (defined as African American, Native American, and Latino) automatically received 20 points.

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[9] *Gratz, et al. v. Bollinger, et al.*, 123 S.Ct. 2411, 2433 (2003).

Unlike the undergraduate school, the law school did not use a point system. Instead, it conducted a holistic examination of each applicant, focusing on academic ability as well as a flexible assessment of the individual's talents, experiences, and potential "to contribute to the learning of those around them."[10] While the school's admissions committee looked at such factors as grades and test scores, it also recognized that there is more to success than raw numbers. As a result, the law school's admissions committee also reviewed other factors in assessing the applicant's likely contributions to the intellectual and social life of the institution, including information from recommendations, quality of the undergraduate institution, undergraduate course selection, and the applicant's essay.[11] In assessing race/ethnicity as one of the factors, the law school reaffirmed its longstanding commitment to "racial and ethnic diversity with special reference to the inclusion of students from groups which have been historically discriminated against, like African Americans, Hispanics, and Native Americans, who without this commitment might not be represented in our student body in meaningful numbers."[12]

The "Diversity Rationale" and "Compelling Interest"

The plaintiffs in each case argued that the University of Michigan's admissions practices unlawfully discriminated against them by taking race and ethnicity into account, no matter the intended rationale. According to the plaintiffs, student diversity is never a compelling interest justifying the use of race-conscious admissions policies; therefore, the policies violated the equal protection clause of the United States Constitution;[13] Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from discriminating on the basis of race, color, or national origin; and a civil rights statute (42 United States Code Section 1981) that prohibits discrimination in contracting. Even if diversity were a compelling interest, the plaintiffs argued, the particular admissions programs in question are not narrowly tailored, and, therefore, should be invalidated.

The university's position in *Gruttér* and *Gratz* was that, under the Supreme Court's 1978 decision in *Bakke*, schools are permitted to take race and ethnicity into account as one factor in a broad-ranging, holistic admissions process. In particular, the University of Michigan argued that the *Bakke* decision permits (under the Constitution and Title VI) using race and ethnicity as ***one*** factor in its admissions program to achieve the educational benefits of a student body that is both diverse and academically excellent.

The "diversity rationale," as articulated by Justice Lewis Powell in *Bakke*, allows an institution of higher education, such as University of Michigan, to use race and ethnicity as a factor in admissions decisions because of the critical importance, legally referred to as the "compelling interest," in ensuring a diverse student body. Justice Powell said that diversity was an important enough goal to justify using affirmative action in admissions decisions.

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10 *Grutter*, 123 S.Ct. at 2331.
11 *Grutter*, 123 S.Ct. at 2332.
12 *Id.*
13 U.S. Const., Amdt. 14, § 2. (The equal protection clause is in the 14th Amendment of the U.S. Constitution, which reads: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; *nor deny to any person within its jurisdiction the equal protection of the laws*.") [Emphasis added.]

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"Narrow Tailoring Requirement"

However, in *Bakke*, Justice Powell, and the Court's subsequent decisions, also stated that a university must be very careful when using race and ethnicity in its admissions process. In other words, the policy must be "narrowly tailored" to serve the compelling interest in diversity. Narrow tailoring assures that a race-conscious/ethnicity-conscious admissions policy can withstand "strict scrutiny" in a court of law. The purpose of the narrow tailoring requirement is to assure that the policy protects against discrimination forbidden by the equal protection clause of the 14th Amendment.

From these decisions, we may infer that "narrowly tailored" means that:

- quotas (such as fixed numbers or fixed percentages of available places) and separate admissions tracks for minorities are forbidden;
- there must be individualized consideration of each applicant;
- race-neutral and ethnicity-neutral alternatives that could enhance diversity should be explored in good faith (although not necessarily implemented in advance of using race-conscious/ethnicity-conscious policies); and
- institutions should periodically review whether race-conscious/ethnicity-conscious measures continue to be necessary.

Thus, the U.S. Supreme Court was confronted with two questions in the Michigan cases:

- Is "diversity" a compelling governmental interest justifying the use of narrowly tailored, race-conscious remedies?
- Are the Michigan policies "narrowly tailored?"

In *Grutter*, the Court concluded that diversity is a compelling interest justifying the use of narrowly tailored, race-conscious admissions policies. In so doing, the Court reaffirmed Justice Powell's diversity rationale set forth in *Bakke*. The Court emphasized the need for the path of leadership to be visibly open to talented and qualified individuals of every race and ethnicity, particularly in light of the need to cultivate a diverse set of tomorrow's leaders.[14]

On the narrow tailoring question, the Court upheld the law school policy as being narrowly tailored, but struck down the undergraduate policy as unconstitutional. In upholding the law school policy, Justice O'Connor, writing for the majority in *Grutter*, noted that the law school engages in a "highly individualized, holistic review of each applicant's file" in which race counted as a factor but was not used in a mechanical way.[15] In *Gratz*, however, Justice O'Connor sided with the majority that struck down the undergraduate policy because its point system, which gave minority applicants 20 points out of the 100 guaranteeing admission, lacked "a meaningful individualized review of applicants."[16] In other words, the Court found that

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[14] *Grutter v. Bollinger, et al.*, 123 S.Ct. 2325, 2344 (2003).
[15] *Grutter v. Bollinger, et al.*, 123 S.Ct. 2325, 2343 (2003).
[16] *Gratz, et al. v. Bollinger, et al.*, 123 S.Ct. 2411, 2431 (2003). (O'Connor, J., concurring).

mechanical and automatic assignment of significant benefits based on race is unlawful.[17] Numerical systems are, therefore, best avoided.

Setting Goals for Diversity, "Critical Mass," and Attention to Numbers

Diversity means more than having a few minority students in the class. The Court in *Grutter* explicitly endorsed the law school's stated goal of seeking a "critical mass" of underrepresented minority students. If a critical mass is not enrolled, it will be impossible to reap the full benefits of diversity. "Critical mass" does not mean quotas; rather, it is a flexible goal that does not compromise quality and is designed to ensure that there are more than merely token numbers of students from underrepresented racial and ethnic groups. The fact that, between 1993 and 2000, the law school's enrollment of students from underrepresented groups ranged from 13 percent to 20 percent was strong evidence demonstrating that the school did not have a quota system.

The Court explicitly noted that some attention to numbers in the pursuit of diversity is permissible. The Court cited Justice Powell's recognition in *Bakke* that there is "some relationship between numbers and achieving the benefits to be derived from a diverse student body, and between numbers and providing a reasonable environment for those students admitted."[18] Thus, in designing a race-conscious/ethnicity-conscious admissions policy using the diversity rationale, a medical school may strive to enroll a "critical mass" of minority medical students, and it may pay some attention to numbers, as long as there is a flexible system in place that satisfies the narrow tailoring elements described in the next section.

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17 *Grutter*, 123 S.Ct. at 2343.
18 *Id.* at 2336.

Implementing the Court's Decisions: Considerations Pertinent to Race-Conscious/Ethnicity-Conscious Admissions Policies

In the *Grutter* and *Gratz* opinions, the Court laid out a number of considerations for schools that choose to develop or to continue race-conscious/ethnicity-conscious admissions policies that will withstand constitutional scrutiny. This section frames these considerations as three questions for medical schools to answer:

- **Question One:** Does your school contend that obtaining the benefits that flow from a racially and ethnically diverse student body are sufficiently important to constitute a compelling interest for your school?
- **Question Two:** If yes, how does your school demonstrate that diversity is a compelling interest for your school?
- **Question Three:** What are the contours (requirements and prohibitions) of your school's narrowly tailored, race-conscious/ethnicity-conscious admissions policies?

The first two questions deal with deciding whether to use the diversity rationale as justification for race-conscious/ethnicity-conscious admissions policies and how to support that decision. The third question is presented to help medical schools as they consider creating such policies, or amending existing policies, in response to the Court's rulings on affirmative action.

Articulating the Diversity Rationale

Question One: Is Diversity a Compelling Interest for Your School?

The U.S. Supreme Court in the University of Michigan cases affirmed Justice Powell's determination in *Bakke* that obtaining a diverse student body may be a compelling interest for an institution of higher education, whether public or private. In so doing, the Court deferred to the university's "educational judgment that such diversity is essential to its educational mission."[19] The Court also overruled those lower courts, most notably the United States Court of Appeals for the Fifth Circuit in the *Hopwood v. Texas* case, which had concluded that diversity was not a compelling interest in the higher education context.[20] It is now clear that diversity may be a compelling interest that can justify the use of narrowly tailored, race-conscious/ethnicity-conscious admissions policies. Thus, a threshold question for a medical school contemplating the use of race-conscious/ethnicity-conscious admissions policies is whether, in its judgment, obtaining the benefits that flow from a diverse student body is sufficiently important to constitute a compelling interest.

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[19] *Grutter*, 123 S.Ct. at 2339.
[20] *Hopwood v. Texas*, 78 F.3d 932 (5th Cir. 1995).

Question Two: How Does Your School Demonstrate Diversity as a Compelling Interest?

However, it is not enough only to answer "Yes" to the first question about whether diversity is a compelling interest for your institution. It is equally important to explore ***why*** racial and ethnic diversity in a medical school is important, and to articulate these reasons, preferably in a written policy. In both Michigan cases, the university introduced a substantial body of critical, expert testimony from a wide variety of sources. Demographers, sociologists, and others documented the need for and benefits of a racially and ethnically diverse student body. In the *Grutter* opinion, the Court cited this evidence, strongly endorsed the benefits of student-body diversity, and offered a number of reasons why diversity may be important, including:

- promoting cross-racial understanding;
- helping to break down racial stereotypes;
- promoting richer classroom learning because "classroom discussion is livelier, more spirited, and simply more enlightened and interesting when the students have the greatest possible variety of backgrounds";[21]
- better preparing students for an increasingly diverse workforce and society; and
- helping to develop a diverse, racially integrated leadership class.

These justifications are not unique to a law school or an undergraduate school. They can apply equally well to a medical school. As such, a medical school may find that these reasons are applicable and may cite any or all as a basis for considering diversity as a compelling interest that justifies race-conscious/ethnicity-conscious admissions policies. In reviewing external studies and data that demonstrate these benefits, schools also should consider how data and information about their own students support the same conclusions.

In addition to racial and ethnic diversity having important benefits in the classroom, diversity in the medical school setting has critically important education-related benefits for the delivery of health care. For example, medical schools can claim the following additional reasons for valuing and fostering diversity, such as:

- enhancing cultural sensitivity and competence among medical students;
- improving access to health care for vulnerable populations; and
- reducing racial and ethnic disparities in health-care treatment and outcomes.

These reasons can be supported by studies that indicate the value of diversity in terms of education-specific benefits and benefits to society. For example, there are a number of studies suggesting that physicians of color are more likely to serve communities of color. Other studies on race concordance in the physician-patient relationship have shown that patients seeing physicians of their own race rate their physician's style as more participatory and were more likely to rate the quality of care as excellent or very good. (Several relevant studies are listed in

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[21] *Grutter v. Bollinger, et al.*, 123 S.Ct. 2325, 2340 (2003).

Appendix B, which offers selected information resources.) These bodies of research are precisely the types of evidence that a medical school may want to rely on (and cite) in explaining why diversity is so important to it.

In fact, evidence from a range of studies and other data was key in convincing the Court that diversity rose to a compelling interest at the University of Michigan's law school.[22] While the Court indicated that it accords "a degree of deference" to a school's judgment about the importance of diversity, this deference is not without limits.[23] Schools should determine how research and other studies specifically apply to their own students. As a result, in addition to using existing data, a medical school may examine its own data about its students and graduates and conduct its own studies to demonstrate why diversity is valuable and necessary.

Preparing Race-Conscious/Ethnicity-Conscious Admissions Policies[24]

Question Three: What are the Contours of Your School's Narrowly Tailored Policies?

The five basic questions below can serve as a useful framework in relation to whether a race-conscious/ethnicity-conscious admissions policy is narrowly tailored.

1. Does the policy offer a **competitive review** of all applicants in one pool (no quotas or set-asides for minority applicants, and no separate track for minority applicants)?
2. Does the policy provide **flexible, holistic, individualized consideration** of applicants with race/ethnicity being one of many factors considered (that is, considering race as a "plus" factor)?
3. Has the institution made a good-faith effort to consider **workable race-neutral alternatives**?
4. Does the policy **avoid unduly burdening non-minority applicants**?
5. Is the program **reviewed on a regular basis** with an eye toward ending reliance on the use of race and ethnicity when practicable?

Medical schools should address all of these questions in consultation with their legal counsel in the process of fashioning policies that will withstand legal scrutiny. To assist schools in preparing or amending their written policies and implementing them, the following narrative explores considerations for each of the five questions.

Competitive Review: Competitive review means that quotas and set-asides are forbidden, and that all applicants are considered in the same pool; that is, every application that a medical school receives is considered by the same admissions committee using a flexible framework of

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[22] Not, in *Gratz*, did the Court question whether diversity was a compelling interest at the undergraduate school. At issue was the applicant review process, not the benefits of having a diverse study body.

[23] *Grutter*, 123 S.Ct. at 2339.

[24] The information in this section draws on the work of The Civil Rights Project at Harvard University in its July 2003 publication, *Reaffirming Diversity: A Legal Analysis of the University of Michigan Affirmative Action Cases*. In particular, the five-question framework for developing and assessing narrowly tailored, race-conscious admissions policies is adapted from material found on pages 8 through 11 of the publication. The complete publication is available in PDF form on the Web at: *www.civilrightsproject.harvard.edu/policy/legal_docs/Diversity_%20Reaffirmed.pdf*

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individualized consideration that will apply to every applicant. (More information about "individualized consideration" appears below.)

In the *Bakke* case, the medical school at the University of California, Davis had a separate pool for minority applicants. A certain number of seats were set aside for these applicants. Similarly, in *Hopwood*, underrepresented minority applicants to the University of Texas law school were considered separately from the rest of the pool. These practices have been held illegal under the U.S. Supreme Court's narrow tailoring framework.

A medical school should not confuse quotas with the legitimate goal of enrolling more than a token number of students from underrepresented racial and ethnic groups. The University of Michigan's law school referred to this goal as achieving a "critical mass."[25] The Court approved of the law school's approach, maintaining that "...a goal of attaining a critical mass of underrepresented minorities does not transform [a] program into a quota."[26] The Court also stated (quoting *Bakke)* that "attention to numbers" in itself (for example, monitoring enrollments) is permissible.[27] The reason is that "some relationship [exists] between numbers and achieving the benefits to be derived from a diverse student body, and between numbers and providing a reasonable environment for those students admitted."[28] In other words, as noted earlier, a medical school can pay some attention to numbers, as long as it uses a single admissions process for all students that is competitive, individualized, and flexible.

Individualized Consideration: Another feature of narrow tailoring in race-conscious/ ethnicity-conscious admissions policies involves considering each applicant individually in a holistic, flexible framework. Within this framework, race can be a "plus" factor among a wide range of other factors in making decisions about which applicants to accept.

Citing *Bakke,* the Court explicitly noted in *Grutter* that "'an admissions program must be flexible enough to consider all pertinent elements of diversity in light of the particular qualifications of each applicant, and to place them on the same footing for consideration, although not necessarily according them the same weight.'"[29] Other factors mentioned by the Court in *Grutter* include "soft variables," which refer to an applicant's characteristics and experiences, as well as the content of recommendations, the applicant's essay, and so forth.[30]

Using race/ethnicity as one factor among many avoids defining diversity "solely on racial and ethnic status."[31] The broader the school's definition of diversity, the more likely it is that the program will satisfy narrow tailoring requirements. For example, the law school's admissions policy upheld in *Grutter* makes clear that there are many possible bases for creating a diverse student body, such as language fluency, overcoming hardship, extensive community service,

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[25] *Grutter v. Bollinger, et al.*, 123 S.Ct. 2325, 2339 (2003).
[26] *Id.* at 2343.
[27] *Id.*
[28] *Grutter* 123 S.Ct. at 2344.
[29] *Grutter*, 123 S.Ct. at 2343-44.
[30] *Id.*
[31] *Grutter*, 123 S.Ct. 2328.

or successful careers in other fields.[32] Therefore, it is important to look at many ways in which an applicant might contribute to a diverse educational environment.

Adopting a broad definition of diversity does not mean that every factor must be given equal weight in evaluating each applicant. The key is individualized, holistic consideration using a flexible framework in which some factors may have more weight for a given applicant. It was significant to the Court in *Grutter* that the law school frequently accepts non-minority applicants with grades and test scores lower than those from applicants from underrepresented groups. According to the Court, this demonstrated that the school "seriously weighs many other diversity factors besides race that can make a real and dispositive difference for non-minority applicants as well."[33]

The manner in which factors were weighed in the undergraduate case (a point system) was quite different from the law school's approach. In this regard, the Court's opinion in *Gratz* provides useful guidance on what does *not* constitute a narrowly tailored admissions policy. The Court found that the policy in question, which assigned an automatic, significant benefit based on race (one-fifth of the points needed for acceptance), was too mechanistic and not flexible enough to satisfy narrow tailoring.[34] While such a point system is probably efficient, especially for schools with large applicant pools, the Court made clear that administrative convenience cannot justify an unconstitutional approach. In writing for the Court in *Gratz*, Chief Justice William Rehnquist stated that "...the fact that the implementation of a program capable of providing individualized consideration might present administrative challenges does not render constitutional an otherwise problematic system."[35]

Exploring Race-Neutral Alternatives: Schools must make a good-faith effort to explore whether there are race-neutral alternatives for achieving the desired diversity. However, schools need not exhaust all such alternatives before implementing narrowly tailored, race-conscious admissions policies.

One important question presented in the Michigan cases was whether schools seeking to expand racial and ethnic diversity are first required to implement race-neutral policies for a certain period of time before turning to race-conscious programs. The Court was clear that narrow tailoring does not require implementing race-neutral alternatives. Rather, "narrow tailoring does ...require serious, good faith consideration of workable race-neutral alternatives that will achieve the diversity the university desires."[36] In *Grutter*, the Court noted that the law school had carefully considered race-neutral alternatives and determined that these potential measures would not have achieved the diversity that the school was seeking. The Court specifically made reference to so-called "percentage plans," such as those used in California, Florida, and Texas, in which institutions guarantee admission to students above a certain class rank threshold. The Court recognized the difficulty of applying these plans to graduate and professional

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[32] *Grutter*, 123 S.Ct. at 2344.
[33] *Grutter*, 123 S.Ct. at 2344.
[34] *Gratz, et al. v. Bollinger, et al.*, 123 S.Ct. 2411, 2432 (2003) (O'Connor, J., concurring).
[35] *Gratz*, 123 S.Ct. at 2430.
[36] *Grutter*, 123 S.Ct. 2325, 2343 (2003).

schools. Furthermore, the Court noted that these plans prevent the type of holistic, individualized consideration "necessary to assemble a student body that is not just racially diverse, but diverse along all the qualities valued by the university."[37]

Not Unduly Burdening Non-Minority Applicants: To address this element of narrow tailoring schools should consider admissions policies that have a broad definition of diversity and emphasize individualized consideration. This does not prevent an applicant's race or ethnicity from tipping the balance in certain cases, just as some other factor may tip the balance in other cases.[38] This "plus factor" approach can be appropriate when there is a flexible process involving a careful, individualized consideration of a broad range of factors.

In *Grutter*, the Court ruled that a constitutional race-conscious admissions policy does not "unduly harm members of any racial group…competing for the same benefit" nor "unduly burden individuals who are not members of the favored racial and ethnic groups."[39] Unduly burdening non-minority applicants was one of the issues in the 1978 *Bakke* case where the medical school at the University of California, Davis did not consider non-minority applicants for certain seats in the class. The Court at the time found that this policy did not stand up to strict scrutiny because, among other reasons, it imposed a substantial burden on non-minority applicants, who were denied consideration for certain seats entirely due to their surname or the color of their skin.[40] The Court still holds such policies unlawful. However, it concluded in *Grutter* that the flexible, individualized framework adopted by University of Michigan's law school is lawful because the law school's policy considers the potential diversity contributions of each applicant on an individual basis.[41]

Periodic Review: The Court in *Grutter* clearly stated that diversity may be a compelling interest for a school, thus justifying its use of race-conscious/ethnicity-conscious admissions policies. The question becomes: How long can race-conscious/ethnicity-conscious policies be used as the means for achieving the goal of expanding diversity? The short answer is that there is no specific timeline. Indeed, the Court in *Grutter* noted:

> "It has been 25 years since Justice Powell first approved the use of race to further an interest in student body diversity in the context of public higher education. Since that time, the number of minority applicants with high grades and test scores has indeed increased.... We expect that 25 years from now, the use of racial preferences will no longer be necessary to further the interest approved today."[42]

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37 *Id.* at 2342.
38 *Grutter*, 123 S Ct. at 2342 (quoting from *Bakke*, 438 U.S. at 312).
39 *Grutter*, 123 S.Ct. 2325 at 2345, (quoting from *Bakke*, *supra* at 298, and *Metro Broadcasting, Inc. v. FCC* 497 U.S. 547, 630 (1990) (O'Connor, J., dissenting).
40 *Grutter*, 123 S Ct. at 2346 (quoting from *Bakke*, 438 U.S. at 318).
41 *Grutter*, 123 S Ct. at 2342.
42 *Id.* at 2347.

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Rather than a timeline, this statement expresses an aspiration that within the next generation race and ethnicity will not need to be taken into account to achieve student-body diversity. The statement is also an admonition from the Court that schools should search diligently for race-neutral ways of increasing diversity. In this regard, the Court maintains that "the requirement that all race-conscious programs have a termination point assures all citizens that the deviation from the norm of equal treatment of all racial and ethnic groups is a temporary matter, a measure taken in the service of the goal of equality itself."[43]

Other Considerations: The Dissenting Opinions

The information on the previous pages of this section comes primarily from the *Opinion of the Court* in each case (*Grutter* and *Gratz*). These opinions represent the majority of the U.S. Supreme Court justices and have the weight of law. Concurring and dissenting opinions issued by individual justices provide further insight into the rulings. Justice Antonin Scalia's dissenting opinion in *Grutter* is of particular interest because it articulates specific challenges that opponents of affirmative action might make in future lawsuits. He posits that such challenges may focus on whether:[44]

- an institution is actually reviewing each applicant's file on an individual basis to "sufficiently avoid 'separate admissions tracks'";
- an institution "...has so zealously pursued achieving..." a critical mass of minority students that the admissions system has transformed into a quota system;
- there are actually "...any educational benefits [that] flow from racial diversity";
- an institution's commitment to diversity is more rhetorical than real;
- an institution has undershot or overshot what Justice Scalia refers to as the "mystical Grutter-approved 'critical mass'"; and
- minority groups not adequately included in the "critical mass" choose to litigate.

In describing these potential challenges, Justice Scalia has provided valuable information that can help medical schools pursue diversity by establishing narrowly tailored, race-conscious admissions policies that take into account how opponents of affirmative action might oppose these policies.

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[43] *Grutter*, 123 S.Ct. at 2346 (quoting *Richmond v. J.A. Croson Co.*, 488 U.S. at 510).
[44] *Grutter v. Bollinger, et al.*, 123 S.Ct. 2325, 2349-50 (2003) (Scalia, J., dissenting).

A Review List of Selected Considerations for Race-Conscious/Ethnicity-Conscious Admissions Policies

The review list below can serve as guidance for formulating race-conscious/ethnicity-conscious admissions policies that are narrowly tailored and in keeping with the rulings of the U.S. Supreme Court in the *Grutter* and *Gratz* cases. The list is not a substitute for legal advice. It does address actions that many observers believe schools must take to have narrowly tailored, race-conscious/ ethnicity-conscious admissions policies that are compliant with the Court's rulings and the Constitution. The list also addresses practices that, although not believed to be mandatory, are recommended by many who have studied the Court's decisions.

Selected Considerations for Race-Conscious/Ethnicity-Conscious Admissions Policies

- Address (preferably in writing) the various reasons why having a racially and ethnically diverse student body is educationally valuable.
- Ensure that there are no quotas or set-asides, and that, regardless of race or ethnicity, applicants are considered in the same competitive pool using the same policies, procedures, and admissions committee members.
- Ensure that applicants receive individualized, holistic consideration using a flexible policy in which race and ethnicity are one of a number of factors taken into account.
- Adopt a definition of diversity that includes, but is not limited to, racial and ethnic diversity.
- Make a good-faith consideration of workable race-neutral alternatives to race-conscious policies, mindful that all race-neutral alternatives need not be exhausted before narrowly tailored, race-conscious admission policies are implemented.
- Consider incorporating into the admissions policy a periodic review process or a sunset provision as a means for reevaluating whether race and ethnicity remain necessary as factors in admissions decisions in the future.
- Support research and analyze data that confirm the benefits of diversity.
- Consider hiring additional admissions officers to ensure that the necessary individualized review of each applicant takes place.
- Review whether workable race-neutral programs exist for attracting a critical mass of students from underrepresented racial and ethnic groups.

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Appendix

Appendix A:
Affirmative Action in Education: Historical Highlights

The U.S. has been crafting and refining affirmative-action policy in education for almost 50 years. At the core of the policy is *who* gets admitted to schools—including medical schools—and *how* it happens. This half-century timeline, which has been shaped by the U.S. Congress, the courts, and individual states, starts with *Brown v. Board of Education* (1954) and runs to *Bakke* (1978) through *Grutter v. Bollinger* (2003) and *Gratz v. Bollinger* (2003). While not an exhaustive list, the following presents a number of landmark events affecting affirmative action and efforts to achieve equity and diversity in education.

1954: *Brown v. Board of Education* – The U.S. Supreme Court ruling that essentially ended segregation in the U.S. by integrating public schools.

1961: *Executive Order No. 10925* – Order signed by President John F. Kennedy that required contractors to "take affirmative action to ensure that applicants are employed . . . without regard to their race, creed, color, or national origin." This was the first use of the phrase "affirmative action" in a civil rights context.

1964: *U.S. Civil Rights Act of 1964* – Legislation passed by the U.S. Congress and signed by President Lyndon Johnson that barred discrimination on grounds of race, color, religion, or national origin in voting, public accommodations, public facilities, and public education. It was the most far-reaching civil-rights legislation since Reconstruction; Title IV of the act authorized desegregation of public schools.

1974: *DeFunis v. Odegaard* – The first major lawsuit over preferential affirmative action, it charged reverse discrimination at the University of Washington law school. The case was declared moot by the U.S. Supreme Court because, when the Court finally heard the argument, the plaintiff (DeFunis) was in his third year of law school and would be permitted to graduate whatever the legal outcome. Although the Court ruled the specific case moot, its ruling was seen as inviting similar cases that were not moot. Four years later, the Court ruled on a similar case (*Bakke*).

1978: *University of California Regents v. Bakke* – The U.S. Supreme Court ruled that, while colleges and universities can consider race as a "plus" factor in the admission process, they may not do so by imposing quotas.

1983: *Bob Jones University v. U.S.* – The U.S. Supreme Court ruled tax-exempt status could not be given to an institution that practices racial discrimination.

1987: *The Michigan Mandate* – The University of Michigan adopted a strategy to create a diverse university environment through faculty, student, and staff recruitment and development efforts.

1994: *Podberesky v. Kirwan* – A ruling by the 4th Circuit U.S. Court of Appeals that the University of Maryland did not provide sufficient proof that a minority scholarship program needed to be limited to only one race. It found the university did not have sufficient evidence of present effects of past discrimination to justify a racially exclusive program and the university program was not narrowly tailored to serve its stated objectives.

1995: *Adarand Contractors, Inc. v. Pena* – The U.S. Supreme Court applied the strict-scrutiny test to federal affirmative-action programs that discriminate on the basis of race.

1996: *Hopwood v. Texas* – A ruling by the 5th Circuit U.S. Court of Appeals that any consideration of race, even as one factor among many, is unconstitutional. The U.S. Supreme Court declined to review the decision. The result was that all affirmative action ended in public universities in Louisiana, Mississippi, and Texas. With the U.S. Supreme Court's rulings in *Grutter* and *Gratz*, some Texas institutions are now reconsidering their admissions policies.

1996: *California Proposition 209* – A state ballot initiative (the California Civil Rights Initiative) was voted into law in California. It prohibited preferences on the basis of race and sex in public contracting, public employment, and public education. The 9th Circuit U.S. Court of Appeals upheld the proposition, and the U.S. Supreme Court declined to hear the appeal.

1997: *[Texas] House Bill 588* – Legislation passed by the Texas Legislature and signed by Governor George W. Bush that granted automatic admission to all students in the top 10 percent of their Texas high school graduating class, regardless of standardized test scores, to any public university in Texas.

1998: *Washington State Initiative 200* – Modeled after California's Proposition 209, this state ballot initiative ordered public agencies to stop giving preferential treatment on the basis of race, sex, color, ethnicity, or national origin.

2000: *"One Florida" Initiative* – A plan put in place by Governor Jeb Bush that banned racial preferences in Florida's contracting and state college admissions. The plan admitted to the University of Florida system all students who completed a college-preparatory curriculum and graduated in the top 20 percent of a Florida high-school senior class.

2003: *Grutter v. Bollinger, et al.* and *Gratz, et al. v. Bollinger, et al.* – The Supreme Court rulings in these two University of Michigan cases upheld the "compelling interest" of using affirmative action to create campus diversity as a rationale for race-conscious admissions and outlined constitutionally acceptable ways of doing so.

Appendix B
Selected Resources
(Publications and Web Sites)

The publications and Web sites listed on the following pages offer just a sampling of information about affirmative action and diversity in higher education in general, and medical education in specific. Other valuable resources are certainly available; nonetheless, we hope that this list provides readers with a basis for understanding the role of affirmative action in creating diversity and the value of diversity to higher education and health care.

Publications (articles, books, journals, and other documents)

Affirmative Action and Diversity in Medical Schools

Academic Medicine, a special theme issue on underrepresented minorities in medical schools in the AAMC's peer-reviewed monthly journal, May 2003. 78(5).

Academic Medicine, a special theme issue on educational programs to strengthen the academic pipeline leading to medical school in the AAMC's peer-reviewed monthly journal, April 1999. 74(4).

"The Case for Diversity in the Health Care Workforce," J.J. Cohen, B.A. Gabriel, and C. Terrell, *Health Affairs*, 2002. 21(5): p. 90-102.

"The Consequences of Premature Abandonment of Affirmative Action in Medical School Admissions," J.J. Cohen, *JAMA*, 2003. 289(9): p. 143-9.

Finishing the Bridge to Diversity, J.J. Cohen, Association of American Medical Colleges, 1996.

"The Health of the Nation: Why Affirmative Action is Needed in Medical School Admissions," C. Terrell, *Black Issues in Higher Education*, 2003. 20(5): p.74.

Minority Students in Medical Education: Facts and Figures XII. A periodic publication for medical educators and policy makers that provides detailed racial and ethnic statistical information about medical education in the U.S. AAMC, 2002. Available in PDF format at *www.aamc.org/publications/factsandfigures.htm*.

Presidential Memorandum, 03-30. Discusses the U.S. Supreme Court's decisions in the University of Michigan cases. AAMC, July 28, 2003.

Reaffirming Diversity: A Legal Analysis of the University of Michigan Affirmative Action Cases, Cambridge, MA: The Civil Rights Project at Harvard University, 2003. Available in PDF format at *www.civilrightsproject.harvard.edu/policy/legal_docs/Diversity_%20Reaffirmed.pdf*.

The Right Thing to Do, The Smart Thing to Do: Enhancing Diversity in Health Professions. Summary of and presentations from the Symposium on Diversity in Health Professions in honor of Herbert W. Nickens, M.D., held at the Institute of Medicine. National Academy Press, 2001.

***Amicus curiae* briefs submitted to the U.S. Supreme Court in the *Grutter* and *Gratz* cases:**

- All *amicus* briefs filed with the U.S. Supreme Court in *Grutter v. Bollinger* and *Gratz v. Bollinger* (in support of the University of Michigan, in support of Barbara Grutter, and in support of Jennifer Gratz and Patrick Hamacher) can be found on the University of Michigan's Admissions Lawsuits Web site at *www.umich.edu/~urel/admissions/legal/amicus.html*.
- Of special note are the *amici* filed by:
  - the Association of American Medical Colleges and other health professions groups at *www.umich.edu/~urel/admissions/legal/gru_amicus-ussc/um/AAMC-gru.doc*, and
  - what is called the "Generals' Brief," cited by the Court in the decision on *Grutter v. Bollinger*, filed by Lt. Gen. Julius W. Becton, Jr. and other retired military leaders at *www.umich.edu/~urel/admissions/legal/gru_amicus-ussc/um/MilitaryL-both.pdf*.

Context and Impact of Racial Diversity in Higher-Education Settings

Chilling Admissions: The Affirmative Action Crisis and the Search for Alternatives. Leading scholars of affirmative action in higher education place the current attacks on affirmative action in the larger context of historical discrimination and the legal battle for educational equity. Edited by Gary Orfield and Edward Miller. Harvard Education Publishing Group, 2001.

Compelling Interest: Examining the Evidence on Racial Dynamics in Colleges and Universities. Research evidence relevant to race-conscious admissions policies, plus a framework for examining it. Edited by Mitchell J. Chang, Daria Witt, James Jones, and Kenji Hakuta. Stanford University Press, 2003. [Note: Cited in U.S. Supreme Court decision on *Grutter v. Bollinger*.]

Diversity Challenged: Evidence on the Impact of Affirmative Action. An exploration of what is known about how increasing minority enrollment changes and enriches the education process. Edited by Gary Orfield and Michael Kurlaender of the Civil Rights Project of Harvard University. Harvard Education Publishing Group, 2001. [Note: Cited in U.S. Supreme Court decision on *Grutter v. Bollinger*.]

Reducing Intergroup Bias: The Common Ingroup Identity Model. How intergroup biases—including subtle, contemporary forms of racism—can be combated and a common ingroup identity can help bring about more harmonious intergroup relations. By Samuel L. Gaertner and John F. Dovidio. Psychology Press, a member of the Taylor & Francis Group, 2000.

Supporting research submitted to the U.S. Supreme Court in the *Grutter* and *Gratz* cases:

- Research about the educational benefits that flow from a diverse student body can be found on the University of Michigan's Admissions Lawsuits Web site at *www.umich.edu/~urel/admissions/research*.
- This Web site also offers reports prepared for the lawsuits, responses to the critiques of the University of Michigan research, other University of Michigan faculty research, and links to related research

The Shape of the River: Long-Term Consequences of Considering Race in College and University Admissions. Far-reaching and comprehensive study of affirmative action in America. By William G. Bowen and Derek Bok. Princeton University Press, 2000. [Note: Cited in U.S. Supreme Court decision on *Grutter v. Bollinger*.]

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Cultural Competence

Academic Medicine, a special theme issue on cultural competence in the AAMC's peer-reviewed monthly journal, June 2003. 78(6).

"The Concept of Race and Health Status in America," D.R. Williams, R.J. Lavizzo-Mourey, and R.C. Warren, *Public Health Report*, 1994. 109(1): p. 26-41.

"Cultural Competence—An Essential Hybrid for Delivering High Quality Care in the 1990s and Beyond," R. J. Lavizzo-Mourey and E. MacKenzie, *Transactions of the American Clinical and Climatological Association*, 1995. 107: p. 226-35; discussion 236-7.

"How Does a Changing Country Change Family Practice?" J.E. South-Paul and K. Grumbach, *Family Medicine*, 2001. 33(4): p. 278-85.

"Race, Gender, and Partnership in the Patient-Physician Relationship," L. Cooper-Patrick, et al., *JAMA*, 1999. 282(6): p.583-9.

Unequal Treatment: Confronting Racial and Ethnic Disparities in Health Care. An exploration of how persons of color experience the health-care environment, disparities in treatment arise, and aspects of the clinical encounter may contribute to such disparities. Edited by Brian D. Smedley, Adrienne Y. Stith, and Alan R. Nelson, and produced by the Institute of Medicine's Committee on Understanding and Eliminating Racial and Ethnic Disparities in Health Care. National Academies Press, 2003.

Minority Physician Practice Patterns

"Physician Race and Care of Minority and Medically Indigent Patients." E. Moy and B.A. Bartman, *JAMA*, 1995. 273(19): p. 1515-20.

"Physician Service to the Underserved: Implications for Affirmative Action in Medical Education," J.C. Cantor, et al., *Inquiry*, 1996. 33(2): p. 167-80.

"Practice Patterns of Black Physicians: Results of a Survey of Howard University College of Medicine Alumni," S.M. Lloyd, Jr., and D.G. Johnson, *Journal of the National Medical Association*, 1982. 74(2): p. 129-41.

"The Role of Black and Hispanic Physicians in Providing Health Care for Underserved Populations," M. Komaromy, et al., *New England Journal of Medicine*, 1996. 334(20): p. 1305-10.

"The Service Patterns of a Racially, Ethnically, and Linguistically Diverse Housestaff," J.L. Murray-Garcia, et al., *Academic Medicine*, 2001. 76(12): p. 1232-40.

Race-Neutral Alternatives to Affirmative Action

Race Neutral Alternatives in Postsecondary Education: Innovative Approaches to Diversity. A federal catalog of race-neutral ways colleges and universities achieve diversity. Office for Civil Rights, U.S. Department of Education, 2003.

"Response to the U.S. Department of Education's Office for Civil Rights Catalog *Race-Neutral Alternatives in Postsecondary Education: Innovative Approaches to Diversity,*" A. Ancheta, C. Edley, Jr., G. Horn, A. Kauffman, P. Marin, G. Orfield, statement released by The Civil Rights Project, Harvard University, 2003. Available at *www.civilrightsproject.harvard.edu/news/pressreleases.php?record_id=31/.*

Web Sites

Association of American Colleges and Universities (AACU). The AACU's DiversityWeb is an information project designed as "an interactive resource hub for higher education." It is at *www.diversityweb.org/.*

Association of American Medical Colleges (AAMC). The AAMC Web site has a Diversity hub that provides AAMC statements in support of diversity and affirmative action, as well as information on AAMC diversity-related programs and initiatives. It is at *www.aamc.org/diversity/.*

The Civil Rights Project, Harvard University. The Civil Rights Project's Web site is dedicated to "renewing the civil rights movement by bridging the world of ideas and action," doing so by providing news, research, and analysis from leading constitutional scholars. It is at *www.civilrightsproject.harvard.edu/.*

The College Board. The College Board has created a Web site called "Achieving Diversity in Higher Education." This site offers information on a range of topics that includes approaches to achieving diversity, elements of admissions, recruitment, and so forth. The College Board plans to update the site on a regular basis. It is at *www.collegeboard.com/highered/ad/ad.html.*

Equal Justice Society. The Equal Justice Society has "a Web site to help you preserve affirmative action at your college or school." The site features materials, links, and how-to information, including a section on what faculty, students, and alumni can do at schools to support diversity following the U.S. Supreme Court decisions. It is at *www.preserveaffirmativeaction.org/.*

Leadership Conference on Civil Rights (LCCR)/Americans for a Fair Chance (AFC). This civil and human rights coalition hosts a Web site that is "the progressive coalition for equal opportunity and justice." Its goal is to serve as the site of record for relevant and up-to-the-minute civil rights news and information. It is at *www.civilrights.org/.*

University of Maryland. The Diversity Database at the University of Maryland is a comprehensive index of multicultural and diversity resources created by the university. It features general diversity reference resources, as well as diversity plans, statements, and initiatives from various institutions around the U.S., as well as diversity-related syllabi from U.S. colleges and universities. It is at *www.inform.umd.edu/EdRes/Topic/Diversity/.*

University of Michigan. A section of the University of Michigan's Web site is dedicated to information on the two affirmative-action lawsuits against the university (*Grutter* and *Gratz*). It provides a detailed history of the lawsuits, FAQs, supporting research prepared by the university as part of the lawsuits, and PDF versions of all the legal filings and rulings in the cases. It is at *www.umich.edu/~urel/admissions/.*

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